No. 38

In the Supreme Court of the United States

OCTOBER TERM, 1945

IN THE MATTER OF ROBERT D. MICHAEL,
PETITIONER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

CITATIONS

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OPINIONS BELOW

The majority and dissenting opinions in the circuit court of appeals (R. 129–140) are reported at 146 F. 2d 627.

JURISDICTION

The judgment of the circuit court of appeals was entered December 16, 1944 (R. 140). The petition for a writ of certiorari was filed February 20, 1945, and was granted April 2, 1945 (R. 140). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as

amended by the Act of February 13, 1925. See also *Nye* v. *United States*, 313 U. S. 33, 43–44.[1]

QUESTION PRESENTED

Whether false and evasive answers by a trustee in bankruptcy testifying before a grand jury which was investigating, *inter alia*, the proceeding in which he was acting as a trustee, constituted a contempt of court.[2]

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[1] As pointed out in our brief in opposition (footnote 1, p. 2), if the Act of November 21, 1941, c. 492, 55 Stat. 779, 18 U. S. C. 689, which extended the authority of this Court under 18 U. S. C. 687 and 688 to promulgate rules of procedure in criminal cases to cover proceedings to punish for criminal contempt, had the effect of automatically extending the Criminal Appeals Rules to contempt proceedings, as held by the Circuit Court of Appeals for the Seventh Circuit in *United States ex rel. Brown* v. *Lederer*, 139 F. 2d 861, the petition for a writ of certiorari was out of time. However, it is our position that the Criminal Appeals Rules do not apply in the absence of an order by this Court extending them to appeals in contempt proceedings, and we therefore do not contest the timeliness of the petition.

We also stated in our brief in opposition, in the same footnote, that we thought there was a sufficient compliance with the technical requirements of Section 8 (c) of the Act of February 13, 1925, 28 U. S. C. 230, for appeal to the Circuit Court of Appeals, even though petitioner did not file a formal application for the allowance of an appeal.

[2] Two other questions were presented by the petition for a writ of certiorari, i. e., whether the judgment is void because it does not contain an express statement that it was based upon a finding of guilt beyond a reasonable doubt and whether the trial court admitted incompetent evidence. These points are not discussed in petitioner's supplemental brief on the merits; they are dealt with in the Government's

STATUTE INVOLVED

Section 268 of the Judicial Code (28 U. S. C. 385) provides as follows:

> The courts of the United States shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.

STATEMENT

On September 14, 1944, upon direction of the grand jury in session in the United States District Court of the Middle District of Pennsylvania (R. 94–95), a petition was filed before a judge of that court for a rule to show cause why petitioner, a witness before the grand jury, should not be held in contempt. The petition alleged that, in the course of an inquiry into alleged

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brief in opposition (pp. 11–13) and in the opinion below (R. 131). It may be added that the dissenting judge agreed with the majority's disposition of these two questions.

frauds against the United States, the grand jury was investigating the reorganization proceedings of the Central Forging Company of Catawissa, Pennsylvania, of which petitioner had been appointed trustee by the district court; that petitioner was called as a witness before the grand jury and gave obstructive, evasive, perjurious and contumacious answers to questions propounded to him, and deliberately obstructed the investigation of the grand jury. (R. 3–9.) An order to show cause was issued (R. 9–10), petitioner filed an answer (R. 14–19),[3] and a hearing was had at which testimony of various witnesses was taken and petitioner's testimony before the grand jury was introduced in evidence.

The evidence introduced by the Government may be summarized as follows:

On January 1, 1942, petitioner was appointed successor trustee in reorganization of the Central Forging Company (R. 29). He discussed with Harry S. Knight, the attorney for the Maxi Manufacturing Company, a creditor, a plan whereby the assets of Central would be transferred to Maxi for approximately $25,000 (R. 69, 119). In February 1942, when discussing the proposed plan with Hervey Smith, the attorney for one of the other creditors who had opposed a previous reorganization plan (R. 40, 52), peti-

[3] Petitioner also filed a petition for a bill of particulars (R. 10–11) and a motion to quash the rule (R. 13), both of which were denied (R. 12, 14).

tioner and his attorney, Reifsnyder, advised Smith that if he would induce his client to accept the plan, $500 would be paid to him (R. 114–115). On April 8, 1942, when it appeared that the proposed plan would be accepted by the creditors, petitioner, Reifsnyder, and Knight discussed the fees that probably would be allowed in the proceeding, and petitioner and Reifsnyder expressed dissatisfaction with the amount they would probably receive. It was then suggested that the value of the assets of Central be fixed at $3,000 less than the amount previously agreed upon and that such sum be paid by the Maxi Company to a third party for subsequent delivery to petitioner (R. 97–100).

Homer Davis, treasurer of Maxi (R. 125), was, prior to the transfer of the assets of Central, employed as auditor and bookkeeper by petitioner in the latter's capacity as trustee of Central (R. 56, 57, 102). On April 10, 1942, petitioner told Davis that he needed "a large amount of money," about $2,000. Davis asked if petitioner was referring to the $3,000 agreed upon and petitioner replied that the money he needed was in addition to that sum; that "in cases of the kind that we were in it was necessary to spread a little oil" (R. 102). Davis asked whether he should prepare a check payable to petitioner for that amount, and the latter replied that there should be several checks payable to "cash" and that Davis should prepare one payable to himself and should enlist the help

of Max Long, president of Maxi (R. 125), who was also employed by petitioner in his capacity as trustee (R. 59), and prepare another check payable to Long (R. 102). Davis then prepared such checks for petitioner's signature as trustee of Central, and petitioner took them, stating that he would have them countersigned by John Crolly, the referee in bankruptcy; that "he didn't believe John Crolly would know what he was signing" (R. 102–103). The checks thus prepared by Davis consisted of two in the sum of $600 each, drawn to the order of Davis and Long, respectively, and three payable to "cash" in the sums of $450, $250, and $300 (R. 104; Gov. Ex. 5, R. 120–124). On April 16, 1942, petitioner telephoned Davis and stated that he was sending the checks by messenger and on the following morning, April 17, the messenger appeared with the checks (R. 103), which had in the meantime been signed by petitioner and countersigned by Crolly (R. 105, 120–124). Davis then secured Long's endorsement and cashed all five of the checks (R. 104). After taking out $200 previously agreed upon as covering his and Long's additional income taxes, Davis turned over $2,000 to the messenger (R. 105–106).

On April 24, 1942, the date of the transfer of the assets of Central, the entire plan was consummated. Maxi paid $3,000 to an attorney, George Fenner, who endorsed the check and left it with petitioner and Reifsnyder (R. 106). After the

closing the parties went to the Catawissa National Bank and obtained cash for the $3,000 check. Five hundred dollars, the amount agreed upon as the sum Fenner would be required to pay as additional income tax, was given to him. Reifsnyder took $500, and the balance was retained by petitioner (R. 107, 110–112). During the course of the transaction, Fenner, in petitioner's presence, stated that "he didn't like it and wished that it could be done some other way" and petitioner replied that only the persons in the room would ever know about it (R. 106–107, 115). Later that day Reifsnyder, in petitioner's presence, paid $500 to Hervey Smith (R. 115).

In his testimony before the grand jury, petitioner denied that there was any discussion of a reduction of the value of the assets of Central for the purpose of enabling him and his attorney to obtain additional fees, denied any knowledge of the $3,000 paid to Fenner by Maxi, stated that he did not recall whether he was at the Catawissa bank on the day of the transfer of the assets of Central, and denied receipt of any additional fee other than that allowed by the court (R. 36, 39, 53–54, 68, 73–77, 86, 88–89). He stated that Reifsnyder gave $500 to Hervey Smith out of the compensation allowed to Reifsnyder (R. 40–45, 54, 78); that Reifsnyder owed Smith the money and wanted to pay him (R. 44). As to the $600 checks payable to Davis and Long dated April 10,

1942, which were cashed on April 17, petitioner admitted that he knew the payments were not for salaries, but stated that he could not remember the reason for the checks (R. 56–57, 59–60, 61). Petitioner explained the checks drawn to "cash" merely as petty cash withdrawals (R. 61–62). He testified that he could not remember any of the five checks because he signed approximately 150 checks a week (R. 56). He subsequently stated that "for all practical purposes" Maxi had already taken over the business and that he did not watch expenditures carefully, although he admitted that on April 14 he had filed a report of the assets of the Central Forging Company (R. 57–58, 60, 62–64). At a later appearance before the grand jury, he testified that the checks to Davis and Long might have represented bonuses to those men, although he did not authorize such bonuses (R. 84). He had no explanation for the fact that all five of the checks were cashed on the same day (R. 61–62, 64–66). He denied ever discussing the five checks with Davis, denied telling Davis by telephone that he was sending a messenger with the checks, denied sending the messenger, and denied receiving the proceeds of the checks (R. 61–62, 64–66, 87–88). Petitioner also denied telling Davis that it was necessary to "spread a little oil" (R. 88).

At the close of the case, the trial judge stated orally that he was "convinced beyond a reasonable

doubt" that petitioner was guilty of contempt, referring particularly to the $3,000 transaction and the five checks cashed on April 17. The judge further stated that he was convinced that petitioner's testimony with reference to these transactions "was wilfully and deliberately false and was given with the wilful and deliberate intent to obstruct the Grand Jury in its inquiry, and this Court in the due administration of justice." (R. 116.)

Thereafter the judge entered a written "Judgment and Commitment" sentencing petitioner to six months' imprisonment; the judgment recited that petitioner, having been duly sworn as a witness and questioned before the grand jury concerning matters relevant and material to its inquiry, had given "false and evasive" testimony, and that "the false and evasive testimony * * * obstructed the said Grand Jury in its inquiry and the due administration of justice" (R. 92–93).

On appeal, the judgment of the district court was affirmed (R. 140), one judge dissenting (R. 134–140).

SUMMARY OF ARGUMENT

1. This Court has laid down the rule that, although perjury alone in the presence of the court is not punishable as contempt, an act obstructive of justice is none the less so punishable even

though perjury is the means used to effect such end. *Ex parte Hudgings*, 249 U. S. 378; *Clark* v. *United States*, 289 U. S. 1.

Petitioner's conduct had the obstructive element necessary to constitute contempt. The grand jury, which was inquiring into the system of bankruptcy administration in the district, was interested, not merely in tracing funds into petitioner's hands, but in discovering the disposition of such funds by petitioner. By giving misleading answers as to the manner whereby the money was withdrawn, and denying receipt of any part of the money extracted from the assets of the Central Forging Company, petitioner effectively blocked any inquiry into the disposition of the funds, and thus obstructed the grand jury in the performance of its functions.

2. Evasive answers by a witness, designedly concealing facts which the witness must have known, is contumacious conduct, punishable as contempt, even though perjury alone may not be. Petitioner's testimony, particularly in respect of the five checks cashed on April 17, was of this character. His different explanations of his alleged inability to recall his reasons for signing the five checks were evasive on their face. When considered in relation to the established fact that petitioner had deliberately planned the scheme for the withdrawal of money by means of the

checks, it is clear that his entire testimony in this regard was a series of evasive answers, deliberately designed to mislead the grand jury.

3. Petitioner's conduct also constituted misbehavior by an officer of the court in his official transactions. At the time petitioner testified before the grand jury he was still trustee of the Central Forging Company and thus an officer of the district court. He was testifying before an arm of the same court in respect of the very matter in which he was acting as trustee. His failure to make full and frank disclosure of all relevant information was thus a breach of his official duty.

ARGUMENT

I

UNDER THE DECISIONS OF THIS COURT AN OBSTRUCTION OF JUSTICE BY PERJURY IN THE PRESENCE OF THE COURT IS PUNISHABLE AS CONTEMPT. THE FACTS IN THIS CASE ESTABLISH SUCH OBSTRUCTION

In *Ex parte Hudgings*, 249 U. S. 378, 383, this Court decided that perjury committed in the presence of the court does not constitute contempt; "that in order to punish perjury in the presence of the court as a contempt there must be added to the essential elements of perjury under the general law the further element of obstruction to the court in the performance of its

duty."[4] The logic of such a holding—that deliberate falsification by a witness sworn to tell the truth does not *per se* obstruct the administration of justice—is open to question for, as the majority below indicated, referring to the opinion in *United States* v. *Arbuckle*, 48 F. Supp. 537 (D. C. D. C.) 538, "It imposes burdens on court and counsel and its refutation takes time and expense" (R. 132). But as appears from the *Hudgings* decision itself, the Court was concerned with striking a balance between the power of the court to vindicate its integrity and the right of the individual to testify without fear of coercion (see 249 U. S. at p. 384). We do not question the desirability of the rule enunciated

[4] Petitioner does not question that his perjury was committed in the presence of the court. It is well settled that the grand jury is an appendage of the court, and proceedings before it are regarded as being in the presence of the court. *United States* v. *Dachis*, 36 F. 2d 601, 602 (S. D. N. Y.); *In re Presentment by Grand Jury of Ellison*, 44 F. Supp. 375 (D. Del.), affirmed, 133 F. 2d 903 (C. C. A. 3), certiorari denied, 318 U. S. 791; see also *Camarota* v. *United States*, 111 F. 2d 243, 246 (C. C. A. 3), certiorari denied, 311 U. S. 651; *United States* v. *Brown*, 116 F. 2d 455 (C. C. A. 7); cf. *Savin, Petitioner*, 131 U. S. 267, 277.

The contentions made in the petition for a writ of certiorari which was denied in the *Ellison* case, *supra*, were that the geographical rule announced in *Nye* v. *United States*, 313 U. S. 33, in respect of the "so near thereto" phrase, required that the conduct be in the actual, physical presence of the court, excluding, in consequence, misbehavior in the grand jury room, and that the misbehavior punishable was limited to disturbances of the court's order "by 'noise, tumultuous or disorderly behavior,' or similar misbehavior" (No. 832, October Term, 1942, Pet. 10).

by the Court as to contempt in the case of perjury. We wish merely to emphasize that the Court did not hold that perjury may never be contempt; that the nub of its decision was that "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is * * * the characteristic upon which the power to punish for contempt must rest" (249 U. S. at p. 383); and that hence an obstruction to the performance of judicial duty is punishable as contempt even though perjury is the means employed to effect that end. See *Clark* v. *United States,* 289 U. S. 1, 12; *United States* v. *McGovern,* 60 F. 2d 880, 889 (C. C. A. 2), certiorari denied, 287 U. S. 650.

This principle was recognized both before and after the *Hudgings* decision. The following acts have all been treated as contempts of court: the institution of a collusive action, i. e., the false allegation of the existence of a controversy (*Lord* v. *Veazie,* 8 How. 250, 255; *Cleveland* v. *Chamberlain,* 1 Black 419, 426); concealment of bias by a talesman with the result that she was selected as a juror (*Clark* v. *United States,* 289 U. S. 1, 12); a false statement by a disbarred attorney that he was a member in good standing of the bar of another jurisdiction with the result that he was admitted to practice *pro hac vice* (*Bowles* v. *United States,* 44 F. 2d 115, 118, 50 F. 2d 848, 851 (C. C. A. 4), certiorari denied, 284 U. S. 648); the offer-

ing of a false lease in evidence (*United States* v. *Karns,* 27 F. 2d 453 (N. D. Okla.); false testimony that subpoenaed records had been destroyed when in fact they were still in existence (*United States* v. *Brown,* 116 F. 2d 455 (C. C. A. 7); *United States* v. *Dachis,* 36 F. 2d 601 (S. D. N. Y.). In all these cases false swearing was involved, but the effect of the false swearing was not limited to conveying to the court false information about the particular fact sworn to; it went further and deflected or was intended to deflect the entire course of the judicial proceeding. For that reason the false swearing was held to be a contempt of court.

On the same principle a number of decisions have held that witnesses were properly punished for contempt, not so much because their testimony was false, but because their false testimony represented an obstruction of the judicial process. *In re Meckley,* 137 F. 2d 310 (C. C. A. 3), certiorari denied, 320 U. S. 760; *In re Presentment by Grand Jury of Ellison,* 44 F. Supp. 375 (D. Del.), affirmed, 133 F. 2d 903 (C. C. A. 3), certiorari denied, 318 U. S. 791; *Schleier* v. *United States,* 72 F. 2d 414 (C. C. A. 2), certiorari denied, 293 U. S. 607; *United States* v. *McGovern,* 60 F. 2d 880 (C. C. A. 2), certiorari denied, 287 U. S. 650; *Lang* v. *United States,* 55 F. 2d 922 (C. C. A. 2), certiorari dismissed, 286 U. S. 523; *O'Connell* v. *United States,* 40 F. 2d 201 (C. C. A. 2), certiorari dismissed, 296 U. S. 667; *Loubriel* v. *United States,*

9 F. 2d 807 (C. C. A. 2); *Haimsohn* v. *United States*, 2 F. 2d 441 (C. C. A. 6); *In re Kaplan Bros.*, 213 Fed. 753 (C. C. A. 3), certiorari denied, 234 U. S. 765; *In re Schulman*, 177 Fed. 191 (C. C. A. 2); *In re Rosenblum*, 268 Fed. 381 (W. D. Mo.); *United States* v. *Appel*, 211 Fed. 495 (S. D. N. Y.); *In re Shear*, 188 Fed. 677 (W. D. N. Y.); *In re Gitkin*, 164 Fed. 71 (E. D. Pa.); *Ex parte Bick*, 155 Fed. 908 (C. C. S. D. N. Y.). In most of these cases, the falsity of the testimony was readily apparent and consisted of flippant or obviously evasive answers, such as inability to recollect facts which the witness must have known. On the basis of this circumstance, petitioner argues (Supplemental Brief, p. 6) that false testimony cannot constitute contempt unless the falsity is so manifest that it can be determined by a mere inspection of the witness' testimony. However, the concealment of the talesman's bias in the *Clark* case, the collusive nature of the complaint in the *Lord* case, the disbarment of Bowles, the falsity of the lease in the *Karns* case, the existence of the records in the *Brown* and *Dachis* cases, all had to be proved by independent testimony; in none of these cases did the falsity of the statements treated as contempt appear on their face. The contempt lay in the fact that in each instance the false statements tended to obstruct the course of the judicial proceeding which was to follow.

Taking into consideration all the circumstances of this case, including the fact that petitioner was testifying before a grand jury seeking information, we submit that the courts below properly held that petitioner's conduct had the obstructive element necessary to constitute contempt. There can be no doubt on this record that petitioner's vague explanation of the $2,200 withdrawn by means of the five checks cashed on April 17, and his denial of the receipt of the greater part of the $5,200 extracted from the assets of Central by means of these checks and the $3,000 check from Maxi to Fenner, were deliberately false, evasive, and misleading, for the evidence conclusively establishes that petitioner contrived the scheme to extract money by such means, and that he received the greater part of the money so withdrawn. Considered in relation to the scope of the grand jury's inquiry, it is evident that such false and misleading testimony was deliberately designed to and actually did block the grand jury in the performance of its functions.

The grand jury was investigating frauds against the United States, and the tenor of the questions addressed to petitioner indicates that it was directing its inquiry to the entire system of bankruptcy administration in the district. Petitioner was questioned as to his acquaintance with Donald Johnson, the son of the judge who appointed him, and Donald Johnson's part in securing petitioner's appointment as trustee (R. 25–26,

28–29, 50). He was asked whether the appointment of Reifsnyder, whose services he had never before utilized, was suggested by Donald Johnson (R. 30–31, 50–51). The grand jury was obviously concerned, not merely with tracing funds of the bankrupt's estate into petitioner's hands, but with discovering the ultimate disposition of such funds. It is clear from petitioner's testimony as a whole that, in denying the receipt of the money extracted from Central, petitioner was attempting, not merely to save himself, but to shield others. The evidence establishes that at least part of the money wrongfully taken from the assets of Central was withdrawn for the express purpose of "spreading a little oil." By denying that he had received the money and intimating that Davis and Long had withdrawn some of it for their own purposes, petitioner sought to, and did prevent, inquiry into the manner in which he "spread the oil." If petitioner had kept a record of his receipt and expenditure of the funds and had deliberately destroyed or concealed such record in the grand jury room, or if he had admitted receiving the money and had expressed inability to recall his expenditure thereof, he would, under the authorities cited above, pages 13–14, clearly have been guilty of contempt. His false and misleading account of the circumstances under which the five checks cashed on April 17 were drawn, and his false denial of the receipt of any part of the money taken from Central, were

designed to be, and were, as effective a barrier to the grand jury's investigation. Petitioner's conduct was thus obstructive of the grand jury's functions and, under the principles enunciated by this Court, a contempt of court.[5]

II

PETITIONER'S TESTIMONY BEFORE THE GRAND JURY WAS CONTUMACIOUSLY EVASIVE AND HENCE PROPERLY PUNISHED AS CONTEMPT

Although the cases dealing with punishment of witnesses for contempt, cited at page 14, *supra*, speak for the most part in terms of obstruction of justice, the facts in such cases reveal that the

[5] We think that petitioner's conduct could properly have been punished as contempt even if the grand jury had been able to obtain all relevant information from other sources. Petitioner's testimony in respect of the whole scheme—the $3,000 check given to Fenner, the payment to Hervey Smith, and the cash withdrawn by the five checks cashed on April 17—was designed to keep from the grand jury important and relevant information directly material to its inquiry. Petitioner thus intended to block the inquiry, whether or not he succeeded in doing so. That, we submit, would in itself be sufficient to justify his conviction for contempt. See *United States* v. *Brown*, 116 F. 2d 455, 457 (C. C. A. 7); *Lang* v. *United States*, 55 F. 2d 922, 923 (C. C. A. 2), certiorari dismissed, 286 U. S. 523. To obstruct means to render more difficult, not necessarily to prevent entirely. Cf. *Masses Pub. Co.* v. *Patten*, 246 Fed. 24 (C. C. A. 2); *O'Hare* v. *United States*, 253 Fed. 538, 540 (C. C. A. 8), certiorari denied, 249 U. S. 598, interpreting the term "obstruct" as used in the Espionage Act of 1917 (50 U. S. C. 33). As Justice Holmes pointed out in his celebrated dissent in *Abrams* v. *United States*, 250 U. S. 616, 628, a specific intent to bring about a result may itself contribute an element of obstructiveness to acts which would otherwise lack the requisite element.

witnesses were punished for deliberately trying to conceal facts which they must have known, and that their answers were not merely false but evasive. This kind of answer is, in itself, a flouting of the authority of the court, analogous to a refusal to answer, and summary punishment of such conduct can be sustained on the ground that it is contumacious, even if perjury alone is not so punishable.

The circuit court of appeals apparently thought that petitioner's testimony was not of this nature, for both the majority and dissenting opinions state that petitioner's answers were not on their face contumacious, obstreperous, or unresponsive (R. 131, 139). However, the district court found that petitioner's testimony before the grand jury was "false and evasive" (R. 92–93), and the record of petitioner's testimony, particularly in respect of the five checks cashed on April 17, amply supports such finding. Petitioner was a trustee, under a duty to account to the court for his transactions. Yet, when confronted by five checks signed by him as trustee, the existence of which he could not deny, his first explanation was that he signed so many checks he could not remember what they were for, despite the facts that the checks to Davis and Long were far in excess of their salaries, and that the checks to cash totaled $1,000 (R. 56–57, 59–60, 64–65). His next explanation was that, although he was still acting

as trustee at the time of the transactions in question and was then in the process of filing an account of the assets of the company with the court, he did not really perform his functions as such, but considered Maxi the beneficial owner of the business (R. 57–58). Finally, he testified that the $600 checks to Davis and Long might have represented bonuses which they undertook to award to themselves without his permission (R. 84–85). On its face, this testimony by a trustee giving an account of his trust is so patently an attempt to conceal knowledge which he must have had, that it could properly be considered contumacious. When judged in relation to the established fact that petitioner deliberately planned the scheme for the withdrawal of the money by means of the five checks, and therefore must have known the circumstances under which the checks were drawn, it is clear that his entire testimony in this regard was a series of evasive answers designed to mislead the grand jury and conceal facts which petitioner must have known. This was not mere perjury, but a trifling with the court, properly punishable as contempt. Cf. *Schleier* v. *United States*, 72 F. 2d 414 (C. C. A. 2), certiorari denied, 293 U. S. 607; *Lang* v. *United States*, 55 F. 2d 922, certiorari dismissed, 286 U. S. 523; *Loubriel* v. *United States*, 9 F. 2d 807 (C. C. A. 2).

III

SINCE PETITIONER, AT THE TIME HE TESTIFIED BEFORE THE GRAND JURY, WAS STILL ACTING AS TRUSTEE, HIS FALSE TESTIMONY IN RESPECT OF HIS TRANSACTIONS AS TRUSTEE CONSTITUTED MISBEHAVIOR BY AN OFFICER OF THE COURT WITHIN THE PURVIEW OF THE CONTEMPT STATUTE

At the time petitioner testified before the grand jury he was still a trustee of the Central Forging Company (R. 56), and thus an officer of the district court. *Callaghan* v. *Reconstruction Finance Corp.*, 297 U. S. 464, 468; *Realty Associates Securities Corp.* v. *O'Connor*, 295 U. S. 295, 299. He was testifying before an arm of that same court in respect of the very matter in which he was acting as trustee. His deliberate falsification of relevant facts concerning his trusteeship thus falls within that part of Section 268 of the Judicial Code which authorizes punishment as contempt of "the misbehavior of any of the officers of said courts in their official transactions."

This Court has recognized that officers of the court are under a greater duty than are ordinary persons to make full disclosure to the court of all relevant information. *Crites Inc.* v. *Prudential Co.*, 322 U. S. 408, 414. In *Clark* v. *United States*, 289 U. S. 1, 12, the Court stated: "deceit by an attorney may be punished as a contempt if the deceit is an abuse of the functions of his

office * * *, and that apart from its punishable quality if it had been the act of someone else." It ruled in that case that a talesman, sworn as a juror, must be held to the standards applicable to an officer of the court. Certainly a trustee, appointed by the district court, is subject to the same high standard of accountability. There can be no doubt that, if petitioner had been called before the bankruptcy court and had testified there as he did before the grand jury, he would have been guilty of official misconduct punishable as contempt. Cf. *Daily* v. *Superior Court,* 4 Calif. App. 2d 127 (1935); *Goodhart* v. *State,* 84 Conn. 60 (1911); *In re Toepel,* 139 Mich. 85 (1905); *In re S.* —, 115 N. J. Equity 186 (1934), in all of which attorneys or other officers of the court were found to be in contempt because they misled the court or failed to disclose relevant information.

The fact that petitioner was testifying before the grand jury rather than the bankruptcy court does not, we think, serve to render his acts any the less official misconduct. So long as he was a trustee, he was an officer of the court accountable to the court for his official transactions. Just as in the *Crites* case, *supra,* this Court ruled that the duty of a receiver in foreclosure was "not to be measured solely by the arbitrary dichotomy of functions relating to the conservation and liquidation of the farm properties", so in this case petitioner's obligation to make full disclosure

in respect of his official transactions cannot be limited to one particular branch of the district court. He was "bound to act fairly and openly with respect to every aspect of the proceedings before the court". 322 U. S. at p. 414. The inquiry by the grand jury in this case was not as to petitioner's actions as a private citizen, nor as to matters which he may incidentally have learned as trustee. The grand jury was investigating the particular reorganization proceeding in which petitioner was still the trustee, i. e., an officer of the district court. His obligation to give truthful testimony was therefore not merely that of an ordinary witness but that of an officer of the court, and his deliberate falsification of his account of his trusteeship was not only a breach of his duty as a witness, but an abuse of his official functions as well.

Petitioner's then existing status as trustee was not emphasized in the proceeding in the district court, was not made the basis of the district court's decision, and was not considered by the circuit court of appeals in reviewing his conviction. Nevertheless, petitioner would not be prejudiced by an affirmance on such ground. The fact that the grand jury was investigating the reorganization proceedings in which petitioner was still acting as trustee is not in dispute. Whether petitioner's conduct be judged in relation to his duty as a witness or as trustee, the only material issue which was contested was whether petitioner will-

fully concealed relevant information in respect of his conduct as trustee, an issue resolved against him by the judgment of the district court. The holding of that court that petitioner as a witness deliberately obstructed the administration of justice by willfully false and evasive testimony necessarily includes the finding that petitioner as trustee committed an act of official misconduct by withholding relevant information and misleading the court as to his transactions as trustee.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 38.—October Term, 1945.

In the Matter of Robert D. Michael, Petitioner. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 5, 1945.]

Mr. Justice Black delivered the opinion of the Court.

A Federal District Court, after a hearing, adjudged that the petitioner was guilty of contempt on findings that he had given "false and evasive" testimony before a Grand Jury which "obstructed the said Grand Jury in its inquiry and the due administration of justice." A sentence of six months imprisonment was imposed. The Circuit Court of Appeals reviewed the evidence, found that the petitioner had not been "contumacious or obstreperous", had not refused to answer questions, and that his testimony could not be "fairly characterized as unresponsive in failing to give direct answers to the questions asked him." But it accepted the District Court's finding that the petitioner's testimony as to relevant facts was false, and concluded that it was of a type tending to block the inquiry and consequently "an obstruction of the administration of justice" within the meaning of Sec. 268 of the Judicial Code[1] so as to subject petitioner to the District Court's power to punish for contempt. 146 F. 2d 627. We granted certiorari to review this question, in view of the close similarity of the issues here to those decided in *Ex Parte Hudgings*, 249 U. S. 378, a case in which the District Court was held to have exceeded its contempt power.

A brief summary of circumstances leading to the petitioner's conviction will help to focus the issues. The Grand Jury undertook a general investigation of frauds against the United States which led to an inquiry concerning administration of the reor-

[1] Section 268 provides in part that the "power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, . . . and the disobedience or resistance by any . . . witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts."

ganization of the Central Forging Company under Sec. 77 (b) of the Bankruptcy Act. The petitioner, by appointment of a district judge, had been serving as that company's trustee. While before the Grand Jury he was repeatedly interrogated concerning payments of various amounts made from the bankrupt's assets. He was asked to explain the purposes for which numerous checks had been drawn. After weeks of inquiry in which he and others were interrogated about these matters, the Court, on petition of the prosecution before the Grand Jury, issued a rule to petitioner to show cause why an order should not be made adjudging him in contempt of court for obstructing the investigation. Upon trial by the Court the transcript of petitioner's Grand Jury testimony was offered in evidence. The Court then heard other witnesses on behalf of the prosecution who testified to facts which directly conflicted with the petitioner's explanations before the Grand Jury. The District Court, disbelieving petitioner and believing the other witnesses, made its finding that petitioner's Grand Jury testimony had been false. No witness was offered to indicate that the petitioner in the Grand Jury room had been guilty of misconduct of any kind other than false swearing. And a reading of the evidence persuades us that the Circuit Court of Appeals correctly found that he had directly responded with unequivocal answers.[2] These unequivocal answers were clear enough so that if they are shown to be false petitioner would clearly be guilty of perjury. But he could have been indicted for that offense, in which event a jury would have been the proper tribunal to say whether he or other witnesses told the truth. Our question is whether it was proper for the District Court to make its finding on that issue the crucial element in determining its power to try and convict petitioner for contempt.

Not very long ago we had occasion to point out that the Act of 1831, 4 Stat. 487, from which Sec. 268 of the Judicial Code derives, represented a deliberate Congressional purpose drastically to curtail the range of conduct which Courts could punish as

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[2] It is true that when petitioner was first asked whether he drew certain checks on specified dates he answered that he could not be sure in view of the number of checks he drew. When the particular checks were more specifically pointed out petitioner did offer explanations, which though they might have been false, nevertheless constituted clearcut answers.

[3] See also as to this historical purpose, Nyles and King, Contempt by Publication in the United States, 28 Col. L. Rev. 401 *et seq.*; 525 *et seq.*; Fox, The History of Contempt of Court, (1927).

contempt. *Nye* v. *United States*, 313 U. S. 33, 44-48.[3] True, the Act of 1831 carries upon its face the purpose to leave the courts ample power to protect the administration of justice against immediate interruption of its business. But the references to that Act's history in the *Nye* case, *supra*, reveal a Congressional intent to safeguard constitutional procedures by limiting courts, as Congress is limited in contempt cases, to "the least possible power adequate to the end proposed." *Anderson* v. *Dunn*, 6 Wheat. 204, 231. The exercise by federal courts of any broader contempt power than this would permit too great inroads on the procedural safeguards of the Bill of Rights, since contempts are summary in their nature, and leave determination of guilt to a judge rather than a jury. It is in this Constitutional setting that we must resolve the issues here raised.

All perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. "Therefore it cannot be denied that it tends to defeat the sole ultimate objective of a trial." It need not necessarily, however, obstruct or halt the judicial process. For the function of trial is to sift the truth from a mass of contradictory evidence, and to do so the fact finding tribunal must hear both truthful and false witnesses. It is in this sense, doubtless, that this Court spoke when it decided that perjury alone does not constitute an "obstruction" which justifies exertion of the contempt power and that there "must be added to the essential elements of perjury under the general law the further element of obstruction to the Court in the performance of its duty." *Ex parte Hudgings*, *supra*, 382, 383, 384. And the Court added "the presence of that element [obstruction] must be clearly shown in every case where the power to punish for contempt is exerted."

Clark v. *United States*, 289 U. S. 1, is a case in which the Court found that element "clearly shown." In that case, the Court found that a prospective juror had testified falsely in order to qualify despite the fact that she was a partisan who would vote for a verdict of not guilty regardless of evidence of guilt. It is difficult to conceive of a more effective obstruction to the judicial process than a juror who has prejudged the case. For this prevents the very formation of a proper judicial tribunal. As the Court said in the *Clark* case, "The doom of mere sterility was on the trial from the beginning." p. 11. Perjury was not even the basis of the conviction. The Court's opinion makes it clear that

the obstruction would have been the same had the partisan plan to thwart justice been carried out without any swearing at all. Of course the mere fact that false swearing is an incident to the obstruction charged does not immunize the culprit from contempt proceedings. Certainly that position offers no support for the present conviction.

Here there was, at best, no element except perjury "clearly shown." Nor need we consider cases like *United States* v. *Appel*, 211 F. 495, 496, pressed upon us by the government. For there the Court thought that the testimony of Appel was "on its mere face, and without inquiring collaterally . . . not a bona fide effort to answer the questions at all." In the instant case there was collateral inquiry; the testimony of other witnesses was invoked to convince the trial judge that petitioner was a perjurer. Only after determining from their testimony that petitioner had wilfully sworn falsely, did the Court conclude that petitioner "was blocking the inquiry just as effectively by giving a false answer as refusing to give any at all." This was the equivalent of saying that for perjury alone a witness may be punished for contempt. Sec. 268 is not an attempt to grant such power.

Nor can the conviction be upheld under that part of Sec. 268 which authorizes punishment for contempts which consist of "the misbehavior of any of the officers of said courts in their official transactions." While the petitioner was a trustee, and we may assume an officer of the Court within the statutory meaning, he was not engaged in an "official transaction" as trustee when he testified before the Grand Jury in the course of a general inquiry. Whether he could be punished for contempt for giving perjured testimony in the course of proceedings directly involving administration of the estate is another matter not now before us.

The judgments of the Circuit Court of Appeals and the District Court are

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.